BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Definition of an	)	**RM-9335**
Over-the-Air Signal of	)	
Grade B Intensity for Purposes	)	
of the Satellite Home Viewer Act	)	
	)	
To: The Commission	)	

REPLY OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE TO PRELIMINARY RESPONSE OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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Pursuant to Section 1.405(b) of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits this Reply to the Preliminary Response ("Response") of the National Association of Broadcasters ("NAB") to an Emergency Petition for Rulemaking ("Emergency Petition") filed by NRTC on July 8, 1998.[1]

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[1] See, Public Notice, Report No. 2290, August 5, 1998. NAB filed its Response to NRTC's Emergency Petition on July 17, 1998, but did not serve NRTC with a copy of its Response, as required by Section 1.405(a) of the Commission's rules, until July 22, 1998.

I. SUMMARY

1. NRTC filed its Emergency Petition in anticipation of a Preliminary Injunction by a District Court in Florida interpreting the "Grade B" provisions of Section 119(d)(10) of the Satellite Home Viewer Act ("SHVA"). On July 10, 1998, two days after NRTC filed its Emergency Petition, the Preliminary Injunction was issued by the District Court.[2] In the Preliminary Injunction, the Court prohibited PrimeTime 24 from providing CBS and Fox network programming to any customer, "within an area shown on Longley-Rice propagation maps, created using Longley-Rice Version 1.2.2 in the manner specified by the . . . [FCC], as receiving a signal of at least a grade B intensity of a CBS or Fox primary network station." In essence, the Court prohibited the retransmission of network signals by satellite to any subscribers residing within the Grade B contours of local affiliates.[3] The Court required that all subscribers activated on or after March 11, 1997 be disconnected within 90 days.[4]

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[2] CBS, Inc., et al. v. PrimeTime 24 Joint Venture, Supplemental Order Granting Plaintiff's Motion for Preliminary Injunction, Civil Action No. 96-3650-CIV-NESBITT (S.D. Fla. July 10, 1998).

[3] The Court provided an exception from its blanket prohibition only where (1) written consent is obtained from the CBS or Fox station affiliate or the relevant network or (2) a signal intensity test is conducted, "according with the procedures outlined in the Declaration of Jules Cohen," at the consumer's home (15 business days after the affiliate station is given notice of intent to test) and the test proves that the household cannot receive a signal of grade B intensity. CBS, Inc., et al. at 2-3.

[4] Id. at 3.

2. In its Petition, NRTC urged the Commission to assert its authority as the expert regulatory agency in telecommunications matters to prevent the imminent disenfranchisement of more than a million satellite consumers as a result of the Preliminary Injunction. To that end, NRTC urged the Commission to establish a definition of "Grade B" exclusively for purposes of the SHVA that would promote competition by satellite distributors against cable operators and maximize consumer choice in the selection of video program providers. NRTC recommended that the Commission define "Grade B" under the SHVA as the level of coverage received within a contour encompassing a geographic area in which all of the population, using readily available, affordable equipment, receives over-the-air coverage by network affiliates all of the time.

3. In its Response, NAB argues that the Commission should "take no action" with respect to NRTC's Petition. (NAB Response, p. 43). Conspicuously absent from NAB's Response, however, is any discussion of the overwhelming public interest impact resulting from the termination of network satellite service to more than 1,000,000 subscribers. Rather than addressing that critical issue, NAB took the occasion in its Response to launch into an ad hominem attack against the satellite industry in general and NRTC in particular, going so far as to allege - - with no proof (because it is untrue) - - that NRTC filed its Petition as some part of conspiratorial "group" of satellite distributors dedicated to the violation of U.S. copyright law.

4. Regarding the 1,000,000-plus satellite subscribers across the country (the vast majority of whom are located far beyond Florida's borders) facing imminent termination of network service as a result of the Florida District Court's Preliminary Injunction, NAB shows no

concern whatsoever beyond preserving the affiliates' profits in providing network signals over-the-air to those subscribers. (NAB Response, pp. 12-15). Those subscribers, in NAB's view, are nothing more than sham artists who have gamed the system by answering "no" to PrimeTime 24's threshold SHVA compliance questions. (NAB Response, p. 31). NAB claims that if the Commission were to address this massive problem in a meaningful way, it would be acting as nothing more than a "pawn" in furtherance of the satellite industry's well orchestrated, concerted efforts to break the law. (NAB Response, p. 8). Indeed, NAB claims that the Commission *cannot* address the problem, because it lacks the statutory authority to do so. (NAB Response, pp. 21-22).

5. Instead of recognizing the FCC's responsibility to take immediate corrective action when confronted with nationwide satellite disconnections of this unprecedented scope, NAB raises specious legal arguments designed to handcuff the Commission from responding to this crisis. NAB claims that the statute adopted by Congress back in 1988 "froze" forevermore the FCC definition of "Grade B" existing at that time, even though the statute did no such thing -- and even though the United States Supreme Court has made clear, as discussed below, that "it is not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that administrative interpretation in place." Lukhard v. Reed, 481 U.S. 368, 379 (1989). The type of dilution of administrative powers urged by NAB, according to the Supreme Court, "would deprive the administrative process of some of its most valuable qualities -- ease of adjustment to change, flexibility in light of experience and swiftness in meeting new or emergency situations." Helvering v. Wilshire Oil Co., 308 U.S. 90, 101

(1939). These are exactly the kinds of qualities needed at the FCC to address the serious problems created by the Preliminary Injunction.

6. The NAB's arguments against NRTC's Emergency Petition are not supported by law, nor are they supported by public policy. The NAB's Response should be taken by the Commission for what it is: a blatantly monopolistic attempt by the broadcasting industry to prop-up the local affiliates and artificially support their economic well being, all at the expense of competition, consumers and consumer choice.

7. The Florida Court's Injunction has caused a crisis in the satellite industry and, more importantly, for consumers across the country. NRTC turned to the Commission with its Emergency Petition because the Commission -- not a Florida District Court -- is the expert regulatory agency in national telecommunications matters. The Commission -- not a Florida District Court -- should set national telecommunications policy. The FCC -- not a Florida District Court -- should define Grade B for purposes of the SHVA.

8. NRTC urges the Commission to intervene in the Florida District Court case, if possible at this point, and to take whatever other action is necessary to delay the effective date of the Preliminary Injunction in that proceeding until the Commission has had an opportunity to conduct the rulemaking requested in NRTC's Emergency Petition. Otherwise, more than 1,000,000 subscribers across the country will soon be cut-off from receiving network satellite service.

9. NRTC's issue-by-issue Reply to NAB's Response to NRTC's Emergency Petition is attached hereto as an Appendix. The discussion below focuses on the threshold *legal* question raised by NAB regarding the Commission's authority to act on NRTC's Emergency Petition. Despite protestations by the NAB, the Commission clearly has ample legal authority to address and correct this problem.

II. THE COMMISSION HAS AMPLE LEGAL AUTHORITY TO DEFINE "AN OVER-THE-AIR SIGNAL OF GRADE B INTENSITY" FOR PURPOSES OF THE SHVA.

10. In its Response, the NAB argues that the FCC does not have the legal authority to define an over-the-air signal of Grade B intensity for purposes of the SHVA because Congress "froze" into the SHVA Section 73.683(a) of the Commission's Rules and Regulations as it appeared in 1988. (NAB Response, pp. 21-22). This is simply untrue.

11. In defining "unserved household", Congress did not codify in the statute a particular FCC rule regarding signal strength. Instead, Congress referred only to "an over-the-air signal of [G]rade B intensity (as defined by the Federal Communications Commission)."[5] The Commission remains free -- as expected by Congress -- to interpret and define that standard.

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[5] 17 U.S.C. §119(d)(10)(emphasis added).

12. Despite the numerous irrelevant cases cited by NAB in its Response (NAB Response, p. 22), the principle of law that an administrative phrase is not "frozen" when used in a statute was established long ago by the United States Supreme Court. In Lukhard v. Reed, 481 U.S. 368 (1987), the Supreme Court considered the issue of whether a regulatory agency's subsequent change to a term referenced in a federal statute could be applied to interpret that statute. The Supreme Court held that an agency is free to change such a term stating that, "[i]t is of course not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that administrative interpretation in place." Lukhard at 379, emphasis added. Otherwise, as the Supreme Court noted some 60 years ago, an agency would be unable to change its rules prospectively, even through the exercise of appropriate rulemaking powers, without the prior consent of Congress. Helvering v. Wilshire Oil Co., 308 U.S. 90 (1939).[6] See also, Helvering v. Reynolds, 313 U.S. 428, 432 (1941).

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[6] The outcome sought by NAB (i.e., handcuffing the FCC forevermore to a 1988 definition in its rules):

> would not only drastically curtail the scope and materially impair the flexibility of administrative action; it would produce a most awkward situation . . .
>
> . . . the result would be to read into the grant of express administrative powers an implied condition that they were not to be exercised unless, in effect, Congress had consented. We do not believe that such impairment of the administrative process is consistent with the statutory scheme which the Congress has designed. Helvering v. Wilshire Oil Co., at 101.

13. As the NAB pointed out, Congress was aware at the time the SHVA was adopted that the FCC then defined Grade B in a particular way in Section 73.683(a) of the Commission's rules.[7] In H.R. Rep. No. 100-887, the House noted that "unserved household" was defined in the statute as, "a household that with respect to a particular television network, (A) cannot receive, through use of a conventional outdoor antenna, a signal of Grade B intensity (as defined by the FCC, currently in 47 C.F.R. Section 73.683(a))." (emphasis added).[8] In that context, however, contrary to NAB's assertions, the House's use of the word "currently" is explicit recognition that the FCC's rules were *not* locked into the statute and could subsequently change. This phraseology does not in any way preclude the FCC from amending the definition of a signal of Grade B intensity or creating a specific definition exclusively for purposes of the SHVA.

14. In the SHVA itself, Congress did not incorporate into its definition of "unserved household" a particular FCC rule. Rather, it used a general term: "an over-the-air signal of [G]rade B intensity" and made clear that the term was "as defined by the Federal Communications Commission". By the unequivocal language of the statute, the FCC was given the authority and responsibility to define the term. By using the term "an over-the-air signal of [G]rade B intensity," and allowing the FCC to define it, Congress eliminated any confusion as to whether it had intended to "freeze" into law the FCC's Grade B definition as it existed in 1988. Had Congress intended to adopt a specific, then-existing FCC rule, it could have done so. If it

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[7] NAB Response at p.21, citing H.R. Rep. No. 100-887 at 26.

[8] H.R. Rep. No. 100-887 at 26.

had intended to prevent a subsequent change in the FCC's definition of Grade B signal strength for purposes of the SHVA, it also easily could have done so. It did neither.

15. The NAB cites several cases to support its argument that the FCC's definition of Grade B signal as it stood in 1988 remains "frozen" in defining "unserved household." These cases referenced by the NAB, however, are all far off point. First, they deal with statutes interpreting the terms of other *statutes* (not an administrative rule), and second, the court applied the rule of law urged by NAB only when the statute was specifically referred to by *name and section number*. Neither of these circumstances is present with the Grade B language contained in the SHVA.[9]

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[9] For example, in Hassett v. Welch, the Court held that a specific reference to a statute incorporated only the particular section to which Congress referred. 303 U.S. 303 (1938). In Hassett, the Internal Revenue Service argued that the Revenue Act of 1932 incorporated more than one section of the Revenue Act of 1926, although only one section, section 302(c), was specifically named in the statute. The Court ruled against the IRS and held that only the section number enumerated can be held to be specifically incorporated. In Curtis Ambulance of Florida v. Board of County Commissioners of Shawnee County, another case cited by NAB, the legislation in question was held to specifically incorporate another statute by reference. 811 F.2d 1371, 1378 (10th Cir. 1987). The plaintiff in that case argued that the county did not follow local rule Home Rule Resolution No. 80-139 for bidding on county contracts which stated, "[a]ll contracts involving the expenditure of monies in excess of Ten Thousand Dollars ($10,000), and awarded pursuant to Chapter 86, Laws of 1980, shall be awarded on the basis of competition." (emphasis added). The court held that the resolution did incorporate Chapter 86, but only where applicable. The contract was not awarded pursuant to Chapter 86 so the resolution was not binding on the county. While the NAB uses this case to support its argument that an amendment to the definition of Grade B intensity will not impact the application of the "unserved household" restriction of the SHVA, the statute in Curtis specifically names the statute to be incorporated. The SHVA, in contrast, generally refers to a standard (an "over-the-air signal of Grade B intensity") and the agency which has authority to promulgate the standard. The NAB's reliance on Bexar County Criminal District Attorney's Office v. Mayo, 773 SW2d 642 (Tex. Ct. App. 1989) is also misplaced. In Bexar County, while the court stated that, "[w]here one statute

(continued...)

16. The NAB attempts to rely on the recent court decision in ABC, Inc. v. PrimeTime 24 to prove that the FCC's definition of Grade B signal intensity as it appeared in 1988 was frozen into the SHVA's definition of "unserved household," but its reliance again is misplaced. In that decision, the Court, in dicta, opines that the "SHVA's reference to 'an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission)' most naturally refers to the dBu's required for a signal of Grade B strength for each particular channel."[10] The ABC, Inc. v. PrimeTime 24 decision, however, does not in any way address the issue of whether Congress "froze" in place and in perpetuity the FCC's 1988 definition of Grade B signal intensity.

17. Regulations by their nature must be flexible. The responsible expert agency must be free to update and change them as technology and the market warrant, unless clearly prohibited from doing so by statute. See Chevron U.S.A., Inc. v. National Resources Defense

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[9] (...continued)
incorporates another by reference, and the one incorporated is thereafter amended or repealed, the scope of the incorporating statute remains intact," this case is inapplicable to the interpretation of the SHVA's "unserved household" definition. Unlike the SHVA, the statute in question in Bexar County, Article 55.01 of the Texas Code of Criminal Procedure, *specifically* cites to "Article 42.13, Code of Criminal Procedure, 1965, as amended. . . ." See also United States v. Rodriguez-Rodriguez 863 F.2d 830, 831 (11th Cir. 1989), where the court held that even a specific reference to a statute may be held to be a general reference. Other courts, in contrast, have refused to hold that a statute incorporated another statute even when it was referred to by its popular name. See, Monarch Life Insurance Co. v. Loyal Protective Life Insurance Co., 217 F.Supp. 210, 214 (S.D. N.Y. 1963).

[10] Preliminary Response at pp. 19-20, citing to ABC, Inc. v. PrimeTime24, p. 13 (M.D.N.C. July 16, 1998).

Council, Inc., 467 U.S. 837, 865-866 (1984). NAB's construction of the SHVA would deprive the Commission of the qualities which the Supreme Court has recognized as "valuable" to the administrative process: ease of adjustment to change, flexibility in light of experience and swiftness in meeting new or emergency situations. Helvering v. Wilshire Oil Co., 308 U.S. 90, 101 (1939). These are the very qualities that the Commission must employ to address the Grade B problem.

18. While Congress did not order the FCC to commence a rulemaking proceeding to define a signal of Grade B intensity for purposes of the SHVA, Congress, by not incorporating the language of 47 C.F.R. § 73.683(a) into the statute, clearly did not "freeze" the meaning of Grade B signal intensity into the law. Congress did not micro manage this aspect of the implementation of the SHVA. It relied on the expert agency to carry out the goals of the legislation. That authority has now been usurped by a Florida District Court. The Commission must act expeditiously to address and correct the problem created by the Court's Preliminary Injunction by adopting a pro-consumer definition of "Grade B" for purposes of the "unserved household" definition in the SHVA, as urged by NRTC in its Emergency Petition.

III. CONCLUSION

19. Within the context of the SHVA, Congress deferred to the FCC's expertise in defining the Grade B measurement. To promote competition by satellite against cable, to maximize consumer choice in the selection of MVPD providers, and to clarify a situation which

will soon result in the termination of satellite service to millions of subscribers, NRTC respectfully urges the Commission to initiate a rulemaking proceeding on an expedited basis to adopt a definition of Grade B signal intensity exclusively for purposes of the SHVA. The new definition should recognize as "unserved" all households located outside a Grade B contour encompassing a geographic area in which all of the population receives over-the-air coverage by network affiliates all of the time using readily available, affordable receiving equipment. This approach would ensure that the core service area of network affiliates is protected within the SHVA Grade B contour while authorizing satellite reception by all households which in fact are unable to receive an acceptable over-the-air picture.

20. Lastly, NRTC urges the Commission to intervene in the Florida District Court case, if possible at this point, and to take whatever other action is necessary to delay the effective date of the Preliminary Injunction in that proceeding until the Commission has had an opportunity to conduct the rulemaking requested in NRTC's Emergency Petition. Otherwise, more than 1,000,000 subscribers across the country will soon be cut-off from receiving network satellite service.

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative respectfully urges the Commission to assert its authority as the expert regulatory agency in telecommunications matters and prevent the massive, imminent disenfranchisement of more than one million satellite consumers, by adopting a definition of

"Grade B" for purposes of the Satellite Home Viewer Act that promotes competition by satellite against cable and maximizes consumer choice in the selection of video program providers.

Respectfully submitted,

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APPENDIX

NRTC Reply to NAB Response to
NRTC Emergency Petition Re SHVA/Grade B

On July 17, 1998, the NAB filed a "Preliminary Response" to NRTC's Emergency Petition for Rulemaking seeking a new FCC definition of "over-the-air signal of Grade B intensity" for purposes of the SHVA. NAB argues that NRTC's position would undermine the network-affiliate relationship by depriving affiliates of a key source of revenue. In essence, NAB urges the Commission to manipulate viewer choice, to limit viewer access to competing satellite technologies and to prop-up the local affiliates and artificially support their economic well being, all at the expense of consumers.

NAB RESPONSE	NRTC REPLY
1. Throughout its Response, NAB refers to "the Prime Time 24/DIRECTV/NRTC group." (p.1)	1. NRTC is not a "puppet" of PT 24. NRTC did not even consult with PT 24 prior to filing the Petition, let alone belong to any "group" with PT 24.
2. NRTC could have filed its "Emergency Petition" anytime during the past several years. (p. 8)	2. The situation did not reach "emergency" status until a court injunction was imminent (in fact, it was issued two days after NRTC filed its Emergency Petition) and millions of subscribers faced termination of network satellite service.
3. PT 24, DIRECTV and NRTC have never complied with the "unserved household" restriction, or made any "meaningful effort" to do so. (p. 10)	3. NRTC developed a comprehensive compliance program in a good faith effort to implement an impossibly confusing, anti-consumer statute. NRTC has already terminated some 40,000 network satellite subscribers at the request of local affiliates or networks.
4. Far from serving rural America, PT 24 and its distributors (including NRTC) have signed up millions of urban and suburban customers. (p. 10)	4. NRTC primarily serves rural America. Only 2% of NRTC's 850,000 subscribers even have access to cable services.
5. PT 24 and its allies have "chosen" NRTC to file the Emergency Petition. (p.11)	5. NRTC was not "chosen" by PT 24 or anyone else to file the Emergency Petition. NRTC acted solely on its own, on behalf of its rural subscribers who are threatened by the court injunction with termination of satellite service.

NAB RESPONSE	NRTC REPLY
6. A key source of revenues for local affiliates is the sale of advertising. Networks and their affiliates cooperate in a variety of ways to encourage "audience flow" and to promote one anothers' programming. (p. 16)	6. NAB's opposition is a blatantly socialist approach to media: trap local viewers for their revenues, manipulate them through "audience flow," and limit their alternative program sources.
7. The compulsory license for the satellite carrier industry was limited so that only viewers "who could not receive their local stations over-the-air" (so-called "unserved households") would be eligible to receive network stations by satellite. (p. 16)	7. NAB's short-hand characterization of the SHVA is exactly what was reflected in NRTC's pre-screening of potential subscribers (i.e., can you receive an acceptable picture?)
8. The SHVA was designed to bring network programming to unserved areas while preserving the exclusivity that is an integral part of today's network-affiliate relationship. (p. 16)	8. The "Grade B contour" has little if anything to do with the affiliates' exclusivity. Typically, affiliates buy exclusivity for 35 miles — not for Grade B contours or for "served homes."
9. Congress knew that if it established a vague or debatable standard for "unserved households," enforcement of the law would be impossible. (p. 17)	9. Congress did establish a vague and highly debatable standard. Enforcement of the law, in fact, has been impossible. Even the testing mechanism provided for in the SHVA — which has since expired — proved to be totally unworkable.
10. The 90 day waiting period for cable was imposed by Congress to discourage subscribers from switching from local to distant network stations. (p.17)	10. The 90 day waiting period is yet another example of an anticompetitive, unrealistic statutory requirement designed solely to protect the incumbent cable and broadcast operators from competition.
11. "Incredibly, the NRTC asserts that the Commission's definition of Grade B intensity in Section 73.683(a) was 'not intended (by Congress) to be used for purposes of identifying unserved households under the SHVA.'" (p. 18)	11. This rule was not intended by the FCC for that purpose. The FCC has never looked at the rule that way, and it should.

NAB RESPONSE	NRTC REPLY
12. Congress specifically cited the particular definition of "Grade B intensity" the FCC had adopted, which was (and still is) codified in Section 73.683 of the Commission's rules. (p. 19)	12. The rule was not "chiseled in stone" by Congress. The statute specifically allows the FCC to "define" Grade B for purposes of the SHVA.
13. Congress did not make "unserved household" status dependent on whether anyone lived inside a station's predicted Grade B contour, nor does the Florida Court's ruling do so. (p. 20)	13. The Florida Court's ruling did in fact use the Grade B contour per the Longley-Rice model as the threshold for terminating service to millions of subscribers. The Court's decision to allow testing on a site-by-site basis as an exception to its blanket Grade B prohibition, is as a practical matter totally unworkable and will result in massive terminations across the country.
14. Congress did not ask the Commission to engage in any rule making about Grade B intensity or delegate any authority to the Commission to redefine that standard as applied to the SHVA. (p. 21)	14. Congress did not prohibit the FCC from conducting a rulemaking to define the right Grade B standard under the statute. Nor does the FCC need "delegated authority" to conduct a rulemaking to define and clarify its own rules.
15. NAB cites a long list of cases standing for the proposition that "where one statute adopts a particular provision of another (statute) by a specific reference it takes the statute as it exists at the time of adoption," as authority for the proposition that the FCC is prohibited from conducting a rulemaking. (p. 22)	15. Rules, unlike statutes, can be changed by administrative agencies. "It is not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that administrative interpretation in place." Lukhard v. Reed, 481 U.S. 368, 379 (1989).
16. NAB goes to great detail (four pages) outlining the various reasons why viewers would pay to receive network programs by satellite (timeshifting, access to out-of-town sports events, ability to receive network programming without use of antenna, digital format). (p. 28)	16. NAB has done a good job of explaining why viewers should not be locked-out from receiving satellite programming. Rather, viewers should have the flexibility to exercise these types of choices. That's called competition.

NAB RESPONSE	NRTC REPLY
17. PT 24/NRTC's compliance system, which relies entirely on a patently unreliable system of self-reporting, is a "sham." (p. 31)	17. NAB in essence is calling millions of subscribers "liars," "cheats" and "scofflaws" — a strange accusation indeed from an organization purportedly devoted to serving the public interest.
18. NRTC's 100/100 proposal makes no sense and is contrary to sound engineering practices. NRTC does not indicate whether it is referring to a subjective standard of picture quality or to an object of test of signal strength. NRTC might be suggesting that "Grade B intensity" should be conclusively determined by Longley-Rice maps created in a newly-invented way whose sole purpose is to shrink station coverage areas to a fraction of their true coverage. (p. 38)	18. Engineering questions and the details of the implementation of a 100/100 standard can be resolved during the course of the FCC's rulemaking — they are not grounds for dismissing the petition.
19. NRTC's "implied consent" argument is without merit. It is the obligation of distributors to comply with the SHVA, there is no obligation on stations to do so. (p. 42)	19. Enough is enough. Some of these broadcasters have had nearly a decade to object to subscribers receiving network satellite service. It is patently unfair to terminate service to those subscribers at this late date.

CERTIFICATE OF SERVICE

I, Christine Andersen, a legal secretary at the law firm of Keller and Heckman LLP, hereby certify that on this 6th day of August 1998, copies of the foregoing Reply of the National Rural Telecommunications Cooperative to the Preliminary Response of the National Association of Broadcasters were hand-delivered to the following:

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